

BRB No. 12-0480 BLA

WILMA G. WILLIAMS)	
(Widow of BILLY D. WILLIAMS))	
)	
Claimant-Respondent)	
)	
v.)	DATE ISSUED: 05/15/2013
)	
CONSOLIDATION COAL COMPANY)	
)	
and)	
)	
CONSOL ENERGY, INCORPORATED)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Adele H. Odegard, Administrative Law Judge, United States Department of Labor.

Amy Jo Holley and William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (12-BLA-5122) of Administrative Law Judge Adele H. Odegard granting a motion for summary decision filed by the Director, Office of Workers' Compensation Programs (the Director), and awarding benefits on a survivor's claim¹ filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). The administrative law judge found that claimant filed her claim after January 1, 2005, that she is an eligible survivor of the miner, that her claim was pending after March 23, 2010, and that the miner was determined to be eligible to receive benefits at the time of his death. Accordingly, the administrative law judge awarded benefits pursuant to amended Section 932(l) of the Act, 30 U.S.C. §932(l).²

On appeal, employer challenges the constitutionality of amended Section 932(l) and its application to this claim. Claimant has not filed a response brief. The Director urges affirmance of the award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer argues that retroactive application of amended Section 932(l) is unconstitutional as a violation of employer's due process rights, and as an unlawful taking of employer's property, in violation of the Fifth Amendment to the United States

¹ Claimant is the widow of the miner, who died on August 31, 2011. Director's Exhibit 6. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Director's Exhibit 2. Claimant filed her survivor's claim on September 20, 2011. Director's Exhibit 4.

² Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress revived Section 932(l) of the Act, which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l), *amended by* Pub. L. No. 111-148, §1556(b), 124 Stat. 119, 260 (2010).

³ The miner's most recent coal mine employment was in West Virginia. Director's Exhibit 2. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Constitution.⁴ Employer’s Brief at 5-15. Employer also contends that the operative date for determining eligibility for survivor’s benefits under amended Section 932(l) is the filing date of the miner’s claim, not the survivor’s claim. Employer’s Brief at 16-27. The United States Court of Appeals for the Fourth Circuit has rejected all of the same arguments. *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383-89, 25 BLR 2-65, 2-74-85 (4th Cir. 2011), *cert. denied*, 568 U.S. (2012); *see also Vision Processing, LLC v. Groves*, 705 F.3d 551, 556-58 (6th Cir. 2013); *B & G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 247-63, 25 BLR 2-13, 2-44-61 (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 849-51, 24 BLR 2-385, 2-397-401 (7th Cir. 2011). For the reasons set forth in *Stacy*, we reject employer’s arguments.

We also reject employer’s assertion that claimant is not an “eligible survivor” within the meaning of amended Section 932(l) because she did not prove that pneumoconiosis caused, or contributed to, the miner’s death. Employer’s Brief at 27-32. Amended Section 932(l) provides benefits to a survivor without requiring proof that the miner’s death was due to pneumoconiosis. *Fairman v. Helen Mining Co.*, 24 BLR 1-225, 1-231 (2011); *see also Stacy*, 671 F. 3d at 389-91, 25 BLR at 2-85-88; *Campbell*, 662 F.3d at 249-50, 25 BLR at 2-38-39.

In this case, it is uncontested that claimant satisfied her burden to establish her entitlement under Section 932(l). Therefore, we affirm the administrative law judge’s determination that claimant is entitled to receive benefits pursuant to amended Section 932(l) of the Act. 30 U.S.C. §932(l).

⁴ To the extent employer requests that this case be held in abeyance pending the outcome of challenges to other provisions of the Patient Protection and Affordable Care Act, Public Law No. 111-148, that were not resolved by *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. , 132 S.Ct. 2566 (2012), its request is denied. Employer’s Brief at 33.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge